Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Connect America Fund	**)**	**WC Docket No. 10-90**
	)	
Developing an Unified Intercarrier Compensation Regime	**)**	**CC Docket No. 01-92**
	)	

COMMENTS OF SOUTH DAKOTA NETWORK, LLC

South Dakota Network, LLC (SDN), by its attorneys, hereby submits comments to update the record on proposed reforms to intercarrier compensation for tandem switching and transport charges and transit services raised in the *ICC FNPRM*.[1] SDN expands on and updates its comments filed in 2012 on the *ICC FNPRM.*[2]

I. INTRODUCTION

SDN is a Centralized Equal Access (CEA) provider in the state of South Dakota and its regulated CEA operations are funded solely through interstate and intrastate tandem access charges. SDN also provides unregulated transport services including special access and transit services. As explained in its 2012 comments, SDN was authorized by the Commission and South Dakota Public Utilities Commission to bring the benefits of equal

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[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*Transformation Order* or *ICC FNPRM*).

[2] See, Comments of Iowa Network Services, Inc. and South Dakota Network, LLC, filed February 24, 2012.

access and competition to rural areas served by the independent incumbent local exchange carriers (ILECs) in South Dakota, which functionality could not be deployed by rural ILECs in a cost effective manner because ILEC switching facilities varied significantly as to vendor, features and capability; rural ILECs faced restraints on capital; and interexchange carriers (IXCs) were unwilling to make their competitive long distance services available and interconnect with rural ILECs that served few customers with relatively low traffic volumes. SDN was authorized to overcome these problems by aggregating the rural traffic, centralizing the equal access function, and providing interconnection equal in type and quality to all IXCs. The CEA network provided, and still provides, efficient and cost effective equal access to the rural communities served by the ILEC members of SDN by providing uniformly priced switching for access traffic that creates a bridge between the IXC's network and all of the exchanges of the rural ILECs.

SDN, by installing equal access functionality and other features at the CEA switch, also allowed the rural ILECs in South Dakota to avoid the need to install duplicative operating systems and equipment. Instead of modifying each ILEC end office to provide equal access and recording of terminating traffic, these functionalities were installed once in the CEA network. This remains true today. SDN also provides centralized technical expertise, simplified Carrier Access Records Exchange and Access Service Request processing; efficient traffic management and simplified service provisioning for IXCs, which minimizes costs for all companies that want to compete in rural areas.

Through the SDN network, IXCs were and are able to indirectly connect to all of the rural ILECs' local network facilities through one convenient point of interconnection ("POI"). Because SDN aggregates long distance traffic for many rural telephone customers, IXCs have the opportunity of reaching thousands of customers in hundreds of rural communities through a single CEA connection. This concentration of traffic, made possible by CEA, has succeeded in providing consumers in rural ILEC service areas with an attractive choice of several IXCs and has increased the availability of various competitive service offerings. The ILEC members of SDN continue to offer equal access to their customers and end users continue to obtain interexchange service from a number of IXCs. Even today, the limited access traffic demand in the rural areas of South Dakota, but for one CLEC engaged in traffic pumping, would make it difficult to attract IXCs to serve customers in rural areas if the CEA connection was not available. Similarly, some IXCs have not deployed IP connections with SDN because the volume of traffic is low, even with traffic aggregation. Traffic aggregation, however, will make it more likely that IXCs will deploy IP connections. Accordingly, the CEA functions provided by SDN still are necessary and beneficial.

In addition to long distance, SDN has been instrumental in enabling cost-effective rural competition in other areas of the communications industry, as wireless carriers, CLECs and rural broadband providers have connections with SDN to derive the benefits of rural traffic concentration. Even today, the potential traffic demand in the rural areas of South Dakota makes it difficult to economically support the provisioning of all services and to attract the service offerings of wireless carriers, CLECs and rural broadband providers.

CEA has reduced the overall costs for the telecommunications industry, which would have been borne by IXCs and ultimately end users, if the end office switch in each small town and rural area was required to duplicate the advanced features and functionalities provided at the CEA tandem and by SDN. In granting SDN authority to operate, the Commission and the state commission found that the benefits of rural access traffic concentration, for both originating and terminating traffic, which made rural areas more attractive markets from an IXC perspective, was in the public interest.[3] The authority granted by the Commission and the South Dakota Public Utilities Commission continues to govern the relationship between SDN and the IXCs that use its services to reach its ILEC members.

II. CEA SHOULD BE TREATED SEPARATELY AND COST-RECOVERY MUST BE PRESERVED

The *Transformation Order* provided for the transition of tandem switching and transport charges for price cap carriers, "where the terminating carrier owns the tandem in the serving area."[4] However, the Commission did not address the transition for tandem switching and transport charges "if the price cap carrier does not own the tandem in the serving area."[5] The Commission also stated that the *Transformation Order* caps tandem switching and transport at interstate levels for rate-of-return carriers.[6] With respect to CLECs, the Commission stated that "[a]pplication of our access reforms will generally apply to competitive LECs via the CLEC benchmarking rule."[7] Thus, the Commission stated that CLECs that benchmark their rates to price cap carriers are required to follow the transition for price cap carriers and CLECs that benchmark their rates to rate-of-return carriers are required to follow the transition for rate-of-return carriers. The Commission initiated the *ICC FNPRM* to seek further comment on the proper transition for these charges.[8]

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[3] *Memorandum Opinion, Order and Certificate (SDCEA, Inc.),* 5 FCC Rcd. 6978 (Common Carrier Bureau (1990)) ¶24 (finding benefits of centralized equal access services in rural areas of South Dakota justified public interest finding).
[4] *Transformation Order* at ¶1306.
[5] *Transformation Order* at ¶1306.
[6] *Transformation Order* at ¶1306.
[7] *Transformation Order* at ¶807.
[8] *Transformation Order* at ¶1306.

The Commission now asks the parties to refresh the record on issues surrounding the transition of the remaining tandem switching and transport charges to bill-and-keep. Among other things, the Commission seeks comment on any issues brought to light by the transition of tandem charges thus far and "whether the Commission should consider any definitional issues with regard to tandem switching and transport." The Commission also asks if changes to intercarrier compensation for tandem switching and transport would "lead to inadequate revenues for any type of service provider, and, if so, how should the Commission address such shortfalls?" The Commission also asks whether it should place any limitations on either the amount of potential recovery or the period of time within which such recovery should be available; whether there should be a different transition period for originating tandem switching and transport services; and how proposed changes would impact other interrelated issues, such as the definition of a network edge for purposes of delivering traffic?

As a CEA provider, SDN is a unique entity that does not fit neatly under the *Transformation Order's* description of an ILEC or a CLEC. Therefore, the Commission should define and address tandem and transit services provided by a CEA provider separately from any consideration of these services as provided by "Rate-of-Return Carriers," which are defined as ILECs in the Transformation Order, or CLECs.

SDN provides CEA, a tandem switching access service, pursuant to rate-of-return regulation, as a dominant carrier, subject to regulation by the Commission for interstate service and the South Dakota Public Utilities Commission for intrastate service. However, SDN is not a Rate-of-Return Carrier as defined by the Commission in the *Transformation Order*. For purposes of the Transitional Access Service Pricing rules, the Commission defined "Rate-of-Return Carrier" as "any incumbent local exchange carrier not subject to price cap regulation as that term is defined in §61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier."[9] In Section 51.5, the Commission defines "Incumbent Local Exchange Carrier" as, "[w]ith respect to an area, the local exchange carrier that: (1) On February 8, 1996, provided telephone exchange service in such area; and (2)(i) On February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to §69.601(b) of this chapter; or (ii) Is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in paragraph (2)(i) of this section."[10] SDN does not provide telephone exchange service; it was never a member of NECA; and it never became a successor or assign of a member of NECA. Thus, although SDN files its access tariffs pursuant to rate-of-return regulation for its CEA services, it does not fit under the Commission's Transitional Access Service Pricing rules for Rate-of -Return Carriers.

SDN also does not fit squarely into the Commission's definition of a CLEC. In the *CLEC Benchmarking Order*, the Commission adopted rules requiring non-dominant access providers that were largely free from the regulations applicable to incumbent LECs, to benchmark their access rates, in general, to those charged by the incumbent local exchange carrier operating in the same area.[11] SDN, however, is regulated as a dominant access provider for its CEA service and it has always been required to file its access tariff pursuant to Section 61.38 of the Commission's rules. The Commission's grant to SDN to provide

[9] 47 CFR § 51.903(g).

[10] 47 CFR §51.5.

[11] *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) (*CLEC Benchmarking Order*)

CEA service under SDN's 214 application is at odds with the Commission's definition of a CLEC.

The Connect America Fund (CAF) ICC recovery mechanism adopted by the Commission also supports defining tandem services provided by a CEA provider separately. In the *Transformation Order*, the Commission adopted a transitional recovery mechanism "to facilitate incumbent LECs' gradual transition away from ICC revenues reduced as part of this Order."[12] Through the mechanism, incumbent LECs are allowed to recover a portion of the intercarrier compensation revenues, including access revenues, reduced by the *Transformation Order*, through a limited charge assessed to the ILECs' end users and from the CAF. According to the Commission, competitive LECs "are free to recover reduced revenues through end-user charges."[13] Neither of these mechanisms, however, is available to SDN as a CEA provider because SDN has no end users and it is not eligible for CAF.

Changes to intercarrier compensation for tandem switching and transport provided by a CEA provider would lead to inadequate revenues for this service. SDN recovers all costs of its regulated CEA switched access services through interstate and intrastate access charges assessed to carriers using these services. The access charges are based on embedded costs and they are subject to regulatory review by the Commission and the appropriate state commission. SDN files revisions to its interstate access tariff every two years with the full cost support required by Section 61.38 of the Commission's rules. Since the grant of a

[12] *Transformation Order* at ¶ 847.
[13] *Transformation Order* at ¶ 850. The Commission declined to provide an explicit recovery mechanism for competitive LECs because "competitive carriers have generally been found to lack market power in the provision of telecommunications services, their end-user charges are not subject to comparable rate regulation, and therefore those carriers are free to recover reduced access revenue through regular end-user charges." *Transformation Order* at ¶ 864. This is not the case for SDN.

Section 214 Certificate to SDN, CEA tariff rates have decreased significantly. SDN does not have local retail customers or access to local service revenues or subscriber line charges. There are no end users of CEA service that could compensate SDN under a bill-and-keep regime. SDN also does not have access to federal or state universal service support. Therefore, SDN must be able to recover the cost of its regulated CEA service from all carriers that use this service to connect to the rural LECs.

Further, unlike other tandem providers, there is no risk of cost shifting if SDN continues to recover the cost of its regulated service from IXCs. SDN does not own the LEC or end office switch responsible for originating or terminating traffic. No single LEC controls the operation of SDN.[14] For these reasons, the LECs have no ability or incentive to shift costs from end office functions to SDN's tandem switching functions.

SDN also notes that the total amount of traffic carried by its CEA service is an extremely small fraction of the total access minutes nationwide. Therefore, maintaining the current access charge mechanisms for CEA tandem access services should not significantly impact any other carrier.

The current cost recovery mechanisms have worked well to bring the benefits of competition, equal access and advanced functionalities to South Dakota and, therefore, cost recovery for SDN's CEA service must be maintained. Specifically, IXCs would continue to pay for transport to and from the CEA tandem and for tandem switching as part of the CEA service. Maintaining the current compensation mechanism ensures the continued viability of the CEA network and the many benefits it provides to telecommunications carriers and consumers.

III. TRANSIT SERVICE SHOULD REMAIN UNREGULATED

The Commission asks the parties to refresh the record on whether the Commission should adopt regulations governing the rates for transit services and, if so, what compensation regime should apply and why? The Commission also asks parties to comment on the current market for transit services and the effects of competition among transit service providers.

SDN provides transit services pursuant to contract. The transit market is a competitive market and transit services are offered competitively. Accordingly, transit service should remain unregulated.

However, there is a need for the Commission to clearly prohibit "traffic dumping," even in the context of unregulated services, where carriers use transit services without paying for them. As an example, one form of traffic dumping occurs when a wireless provider hands an intraMTA call off to a CLEC, which then dumps the call on a BOC, which then dumps the call on a CEA network that cannot identify who to bill for the transit service that delivers the call to the terminating LEC. In this scenario, it would be cost-prohibitive for the CEA provider to determine which company to bill for the transit service. Therefore, the Commission should make it clear that any carrier that delivers transit traffic to a CEA network is responsible for paying the CEA provider for transit service. The carriers that are closer to the originating end of a call are in a far better position than SDN to identify the carrier that originated the transit traffic and to enforce a contract with that originating carrier for payment of appropriate transit service compensation.

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[14] All except one of SDN's owner members own less than 10% of voting shares, and no owner member can control operations.

IV. CONCLUSION

As demonstrated herein, SDN, as a CEA provider, continues to bring the benefits of equal access and competition to rural areas of South Dakota. However, SDN is a unique entity that does not fit neatly under the *Transformation Order's* description of an ILEC or a CLEC and, therefore, the Commission should define and address tandem and transit services provided by a CEA provider separately. Further, because SDN has no end users and is not eligible for universal service support, changes to intercarrier compensation for tandem switching and transport provided by a CEA provider would lead to inadequate revenues for this service. Accordingly, cost recovery for SDN's CEA service must be maintained.

Respectfully submitted,

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